

V. R. asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's denial of Ms. R.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUE PRESENTED**

Ms. R. filed an application for hearing with the Commission on June 2, 2003, to compel Kindercare Learning Centers and its insurance carrier, American Home Insurance (referred to jointly as "Kindercare" hereafter) to pay either workers' compensation benefits or, alternatively, occupational disease benefits, for back problems that Ms. R. attributed to her work at Kindercare.

Judge La Jeunesse held a hearing on Ms. R. claim on July 1, 2004. On December 29, 2004, Judge La Jeunesse issued his decision denying the claim for lack of evidence of a medical causal connection between Ms. R.' work and her back problems. Ms. R. now asks the Commission to review Judge La Jeunesse's decision. Specifically, Ms. R. contends she submitted sufficient evidence of a medical causal connection between her work and her back injury to warrant referral of her claim to a medical panel.

### **DISCUSSION AND CONCLUSION OF LAW**

The Utah Workers' Compensation Act provides benefits to workers injured by accident arising out of and in the course of their employment. The Utah Occupational Disease Act provides benefits to workers who become disabled by reason of an occupational disease. Under either of these Acts, it is the worker's burden to establish a medical causal connection between his or her work and the medical problem for which benefits are sought.

Section 34A-2-601 of the Workers' Compensation Act permits the Commission to refer the medical aspects of a claim for workers' compensation or occupational disease benefits to an impartial medical panel. In Rule 602-2-2, the Commission has established standards for use of medical panels. In summary, Rule 602-2-2 provides that a medical panel will be appointed when there are conflicting medical opinions on a significant medical issue.

In judging whether Ms. R.' claim should be referred to a medical panel, the Commission acknowledges that the issue of medical causation is a significant medical issue. The only remaining question is whether there is also a conflict of medical opinion on that issue.

Dr. Knoebel has stated his opinion that no medical causal connection can be established between Ms. R.' work at Kindercare and her low back problems. The only medical opinion that might be viewed as contrary to Dr. Knoebel's view is found in Dr. Oka's answers to a questionnaire entitled "Treating Physician's Summary of Medical Records." Several of the questions asked by the

questionnaire are awkwardly phrased so as to assume the existence of a work-related accident. Dr. Oka's answers to these questions are ambiguous and can be taken as suggesting a relationship between Ms. R.' work and her back problems. However, the questionnaire also asks the specific question of whether there is a medically demonstrative causal relationship between Ms. R.' work duties and her medical problems. The question calls for a yes or no answer, but Dr. Oka has marked neither. Instead, he merely states his diagnosis of Ms. R.' medical condition.

At best, Dr. Oka's answers to the foregoing questions are unclear or ambiguous. This lack of clarity has been apparent from November 11, 2003, the date Dr. Oka completed the questionnaire. Likewise, the significance of the ambiguity has been plain since at least December 22, 2003, when, as part of its answer to Ms. R.' claim, Kindercare stated as its "Fifth Defense" that Ms. R.' claim should be denied for lack of medical causation. Likewise, in its Pre-Trial Disclosures, Kindercare reiterated its defense of "no medical causation."

With the question of medical causation plainly in dispute, Ms. R. had several months to either obtain additional medical opinion establishing medical causation, or to obtain clarification from Dr. Oka on that issue. But Ms. R. submitted no such opinion or clarification. Under these circumstances, the Commission concurs with Judge La Jeunesse that Ms. R. did not submit enough evidence to show a dispute on medical causation. Consequently, Judge La Jeunesse properly declined to appoint a medical panel and correctly determined that Ms. R. had not met her burden of proving medical causation.

### **ORDER**

The Commission affirms Judge La Jeunesse's decision and denies Ms. R.' motion for review. It is so ordered.

Dated this 21<sup>st</sup> day of July, 2005.

R Lee Ellertson, Commissioner